

ORIGINAL

OPEN MEETING AGENDA ITEM
EXCEPTION



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BEFORE THE ARIZONA CORPORATION COMMISSION

COMMISSIONERS

KRISTIN K. MAYES, Chairman
GARY PIERCE
PAUL NEWMAN
SANDRA D. KENNEDY
BOB STUMP

2010 MAY 19 P 3: 53

Arizona Corporation Commission

AZ CORP COMMISSION
DOCKET CONTROL

DOCKETED

MAY 19 2010

DOCKETED BY

IN THE MATTER OF THE APPLICATION OF
WATER UTILITY OF GREATER TONOPAH,
INC., AN ARIZONA CORPORATION, FOR AN
EXTENSION OF ITS CERTIFICATE OF
CONVENIENCE AND NECESSITY.

DOCKET NO. W-02450A-04-0837

Exceptions

The Water Utility of Greater Tonopah ("Global Tonopah") respectfully submits these exceptions to the Recommended Opinion and Order ("ROO") issued on May 10, 2010. The ROO recommends granting an extension of time as requested by Global Tonopah to provide a Certificate of Assured Water Supply ("CAWS") "where applicable or when required by statute." Global Tonopah appreciates both the recommended extension and appreciates the Commission's patience regarding the lengthy process for obtaining an assured water supply. However, the ROO recommends deleting the phrase "where applicable or when required by statute" from the requirement, thus effectively requiring a CAWS and only a CAWS. Because Global Tonopah intends to obtain a Designation of Assured Water Supply ("DAWS"), Global Tonopah requests that the original phrase "where applicable or when required by statute" be added to the relevant ordering paragraph because: (1) that is the language used in the CC&N decision; (2) a DAWS is superior to a CAWS, so it is poor policy to require only a CAWS here; (3) ADWR prefers to use a DAWS for this area; and (4) allowing a DAWS would be consistent with Decision No. 71430 (December 8, 2009), which requires a DAWS for the same region.

1 The assured water supply requirement stems from Decision No. 68307 (Nov. 14, 2005) as
2 amended by Decision No. 70690 (Jan. 20, 2009). Decision No. 68307 granted Global Tonopah a
3 Certificate of Convenience and Necessity (CC&N) for the Hassayampa Ranch development.
4 Under Decision No. 68307, Global Tonopah is required to file "a copy of the developer's CAWS
5 issued by ADWR where applicable or when required by statute."¹ The language of the condition
6 is significant, because if Global Tonopah obtains a DAWS, a CAWS would not be "applicable" or
7 "required by statute." By eliminating the phrase "where applicable or when required by statute",
8 the ROO would effectively require Global Tonopah to obtain a CAWS even though: (1) Global
9 Tonopah seeks a DAWS; (2) the landowners also support a DAWS; and ADWR believes that this
10 region should be included in a DAWS, and has significant concern about using CAWS in this area.

11 Under Decision No. 70690, this requirement was extended until May 16, 2010. In granting
12 the previous extension, the Commission noted that Global Tonopah has already complied with 6 of
13 the 7 conditions in Decision No. 68307, and that Global Tonopah has already submitted an
14 Analysis of Assured Water Supply for Hassayampa Ranch.² In addition, Global Tonopah timely
15 applied for a DAWS, submitting its application to ADWR on December 31, 2007.

16 Global Tonopah's DAWS application is a regional application that covers all of Global
17 Tonopah's service area, including areas granted in other dockets. ADWR is reviewing Global
18 Tonopah's DAWS application in conjunction with its comprehensive review of water supply
19 issues in the Lower Hassayampa Sub-Basin. As noted in the November 16, 2009 letter from Karen
20 Smith, Deputy Director of ADWR to the Commission (attached as Exhibit A), ADWR "has been
21 working tirelessly with area developers and water providers (including Global Water and the Town
22 of Buckeye)" to achieve sustainable water use in the Lower Hassayampa Sub-basin. As noted in
23 Deputy Director Smith's letter, the approval of Global Tonopah's DAWS will be "a significant
24 opportunity to move closer to sustainability by maximizing water reuse, recycling and recharge"

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26
27 ¹ Decision No. 68307 at 4:14-19.

² Decision No. 70690, Finding of Fact No. 14.

1 but the extensive analysis required for such a regional planning effort “takes time to achieve.” She
2 emphasized that having the area included in a DAWS - rather than multiple CAWS - is very
3 important, explaining that converting the existing Analyses of Assured Water Supply into multiple
4 CAWS would “seriously cripple a major future employment corridor for the Phoenix area.”

5 Notably, significant differences exist between a CAWS and a DAWS. Most importantly,
6 ADWR has continuing jurisdiction over a DAWS and can modify the DAWS in light of
7 subsequent events or new data. In contrast, once a CAWS is issued and a single home is built on
8 the land, a CAWS may not be revoked or modified. Thus, a DAWS is a much more flexible tool
9 for ADWR. This explains ADWR’s strong support for a DAWS.

10 The proposed deadline in the ROO matches the deadline for the same regional DAWS
11 recently approved in the Belmont case³ by Decision No. 71430 (December 8, 2009). Notably,
12 Deputy Director Smith appeared at the Commission Open Meeting concerning the Belmont case
13 and reiterated the points she made in her letter. The Commission agreed, and granted an extension
14 of time until December 31, 2012 to submit the regional DAWS. The regional DAWS required by
15 Decision No. 71430 is the same regional DAWS that applies to this case because both the
16 Hassayampa Ranch development in this docket and the Belmont development are located in the
17 Lower Hassayampa Sub-Basin.

18 The landowners in the region are actively involved in the regional DAWS process. Global
19 Tonopah submitted a renewed requested for service letter from the developer of Hassayampa
20 Ranch as Exhibit B to its motion for extension of time.

21 In sum, the Commission should approve an amendment to the ROO adding the phrase
22 “where applicable or when required by statute” to the ordering paragraph, because: (1) that
23 language was used in the original condition; (2) because a DAWS is a much more flexible and
24 effective tool than a CAWS, so the Commission should not specifically require a CAWS here; (3)
25 because ADWR prefers a DAWS for this region; and (4) because Decision No. 71430 (December

26 _____
27 ³ Docket Nos. W-02450A-06-0626 et al.

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1 because ADWR prefers a DAWS for this region; and (4) because Decision No. 71430 (December
2 8, 2009) requires Global Tonopah to submit a DAWS by the same date for the same region.
3 Proposed language for an amendment is included in Attachment 1. Alternatively, the Commission
4 should amend the condition under A.R.S. § 40-252 to modify the condition to explicitly allow a
5 DAWS. Proposed language for this alternative is included in Attachment 2. Global Tonopah
6 expressly waives its right to a hearing under A.R.S. § 40-252 for this alternative.

7
8 RESPECTFULLY SUBMITTED this 19th day of May 2010.

9 ROSHKA DEWULF & PATTEN, PLC

10
11 By 

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17
18 Original + 13 copies of the foregoing
19 filed this 19th day of May 2010, with:

20 Docket Control
21 Arizona Corporation Commission
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23 Phoenix, Arizona 85007

24 Copies of the foregoing hand-delivered/mailed
25 this 19th day of May 2010, to:

26 Lyn A. Farmer, Esq.
27 Chief Administrative Law Judge
Hearing Division
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ATTACHMENT 1

Proposed Amendment Language

Page 6, line 8. After the last sentence, INSERT a new sentence as follows: "However, we believe that under the language used in Decision No. 68307, Global Tonopah may comply with this requirement by submitting a DAWS, because if Global Tonopah obtains a DAWS, a CAWS would not be "applicable" or "required by statute." "

Page 6, line 14. After "CAWS" INSERT "or DAWS".

Page 6, line 26. after "Certificate of Assured Water Supply" INSERT "where applicable or when required by statute" .

MAKE ALL CONFORMING CHANGES

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ATTACHMENT 2

Alternative Proposed Amendment Language

Page 6, line 8. After the last sentence, INSERT a new sentence as follows: "Accordingly, we will amend Decision No. 68307 under A.R.S. § 40-252 to allow Global Tonopah to submit a CAWS or DAWS."

Page 6, line 14. After "CAWS" INSERT "or DAWS".

Page 6, line 26. after "Certificate of Assured Water Supply" INSERT "or Designation of Assured Water Supply".

MAKE ALL CONFORMING CHANGES

EXHIBIT

"A"

ORIGINAL

OPEN MEETING AGENDA ITEM



JANICE K. BREWER
Governor

HERBERT E. GUENTHER
Director

ARIZONA DEPARTMENT OF WATER RESOURCES

2009 NOV 16 P 1:20

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ALL CORP. SUBMISSIONS
DOCKET CONTROL

November 16, 2009

Chairman Kristin K. Mayes
Commissioner Gary Pierce
Commissioner Paul Newman
Commissioner Sandra D. Kennedy
Commissioner Bob Stump

Arizona Corporation Commission
DOCKETED

NOV 16 2009

Arizona Corporation Commission
Commissioners Wing
1200 W. Washington
Phoenix, Arizona 85007

DOCKETED BY	
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**Re: Belmont CC&N Revocation
WATER UTILITY OF GREATER TONOPAH, INC. AND HASSAYAMPA
UTILITIES COMPANY, INC. - RESPONSE TO REPLY IN SUPPORT OF
MOTION FOR EXTENSION OF TIME (Docket nos. W02450A-06-0626
AND SW-20422A-06-0566)**

Dear Commissioners:

As a fellow state regulator, I have followed and am familiar with the complexity of the issues the ACC faces. But as someone who works in Arizona's water sector, I am writing to voice my concern with the Commission's recommended opinion and order on Global Water's Certificate of Convenience and Necessity (CC&N) in the Lower Hassayampa Sub-basin, including the Belmont area.

This area has been home to intense dispute and concern for the Department of Water Resources. In the absence of sustainable water practices the long-term sustainability of this area is in jeopardy. Hydrologic modeling and the Department's review have demonstrated that there is insufficient groundwater to meet the anticipated demand of all the proposed developments without integrated water, wastewater and recycled water, long-term regional planning, and a holistic approach to water supply. There is simply not enough groundwater.

The Department has been working tirelessly with area developers and water providers (including Global Water and the Town of Buckeye) to establish the protocols necessary to achieve sustainability. This has not been an easy task. I fear that the Commission's

Chairman Kristin K. Mayes
Commissioner Gary Pierce
Commissioner Paul Newman
Commissioner Sandra D. Kennedy
Commissioner Bob Stump
Arizona Corporation Commission
November 16, 2009
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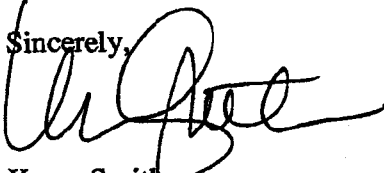
proposed action will unravel these extensive negotiations, and cause a chain-reaction of conversion of Analyses of Assured Water Supply to Certificates of Assured Water Supply. This will seriously cripple a major future employment corridor for the Phoenix area.

In order to achieve sustainability, Global needs the flexibility that only a Designation of Assured Water Supply can provide. Allowing Global to move forward with its Designation of Assured Water Supply is a significant opportunity to move closer to sustainability by maximizing water reuse, recycling and recharge. Absent approval of the CC&N, however, those opportunities cannot be realized. Worse, I expect that we would see a rush of small, developer-centric utilities and systems that will not achieve our long-term water sustainability goals.

In closing, because the Department requires a CC&N to approve a Designation of Assured Water Supply, I urge you to reconsider the proposed action on the CC&N – regional planning takes time to achieve. The benefits to our state of large-scale infrastructure and consolidated approaches to water, wastewater and recycled water use are immeasurable.

I would be pleased to appear at the open meeting to discuss this docket.

Sincerely,

A handwritten signature in black ink, appearing to read 'Karen Smith', written over the word 'Sincerely,'.

Karen Smith
Deputy Director